

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Simitian	SB 31

SUBJECT

Identification Documents/Privacy

SUMMARY

This bill would make it a crime to read or attempt to read personal identification documents using radio frequency identification (RFID) without the owner's knowledge and consent.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to protect personal information from identity theft.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2009, and would apply to violations occurring on or after that date.

ANALYSIS

FEDERAL/STATE LAW

Current law allows a state agency to collect personal information on individuals only to the extent it is relevant and necessary to accomplish a purpose of the agency that is authorized by statute or federally mandated. Personal information is to be collected directly from the individual, to the extent possible, and made available to the individual upon request for inspection for accuracy. Current law provides avenues for taxpayers to correct inaccurate information collected by the state agency.

Current law generally prohibits a state agency from disclosing personal information maintained in its records except in accordance with specific exceptions. The exceptions include disclosing the information to the taxpayer, the taxpayer's authorized representative, other state agencies for the purpose of fulfilling their constitutional duties, investigation purposes, or for purposes of qualifying for state sponsored assistance. The exceptions to disclosing personal information are specific and limited.

Current federal law contains similar provisions for the protection of an individual's personal information maintained within a federal agency's system of records. These provisions identify exceptions that permit disclosure of personal information, as well as procedures to obtain a copy of personal information, address errors, and accounting for disclosures made by the agency.

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THIS BILL

This bill would make it a misdemeanor to intentionally read or attempt to read a person's identification documents remotely using RFID without the owner's knowledge and prior consent. The crime established under this bill would be punishable by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both.

A person or entity that unintentionally remotely reads a person's identification document using RFID is not subject to the provisions of the bill unless it knows it unintentionally read the document and there after intentionally does any of the following:

- Disclose the data to another party whose purpose is to read a persons identification document or any information derived there from without that person's knowledge and consent.
- Use the data for any purpose without the consent of the person to whom the data pertains.
- Store the data without the consent of the person to whom the data pertains.

The provisions of the bill would not be applicable to the reading, storage, use, or disclosure to a third party of a person's identification document or information derived from it in the course of an act of good faith security research, experimentation, or scientific inquiry, including but not limited to activities useful in identifying and analyzing security flaws and vulnerabilities.

The bill would define RFID to mean the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it.

This bill would make it a crime for any person or entity that knowingly discloses or causes to be disclosed certain operational system keys identified under the Civil Code. The crime established under this bill would be punishable by imprisonment in a county jail for up to one year or a fine of not more than \$1,500 or both.

This bill would exempt certain instances of reading identification documents by RFID for purposes that range from providing medical services to law enforcement efforts. Because the department does not use RFID in its daily operations, these exemptions are not discussed in this analysis. This bill would not impact the Franchise Tax Board's operations or programs.

LEGISLATIVE HISTORY

SB 30 (Simitian, 2007) contains provisions relating to the remote reading of identification documents as found in SB 768. This bill was placed in the Assembly inactive file.

SB 768 (Simitian, 2005/2006) contained identical provisions regarding the use of remote devices and security of personal information as SB 682. Governor Schwarzenegger vetoed SB 768 on September 30, 2006. The veto message can be found at the end of this document.

SB 682 (Simitian, 2005) contained identical language regarding the use of remote devices and the security of personal information. SB 682 was held in the Assembly Appropriations Committee.

SB 168 (Bowen, Stats. 2001, Ch. 720) prohibited any person or entity, not including a state or local agency, from using an individual's social security number in certain ways, including posting it publicly or requiring it for access to products or services.

SB 25 (Bowen, Stats. 2003, Ch. 907) extended requirements restricting use of social security numbers to state and local agencies, subject to specified exceptions.

PROGRAM BACKGROUND

Franchise Tax Board (FTB) currently uses an electronic badge system to secure FTB facilities. Each employee is required to wear a badge that contains an electronic device that will identify and record the location and time each individual in the department enters the facility by placing the badge on a reader. The badges issued by the department to personnel are embedded with a number that when activated access a secure database controlled by security staff that displays the picture identification and name associated with the card number. As such, the badges used by the department are free of personal information.

OTHER STATES' INFORMATION

The states reviewed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. No comparable statutes prohibiting state use of devices utilizing radio waves were found.

FISCAL IMPACT

This bill would not impact the department's costs because radio wave technology is not used by the department.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenues.

APPOINTMENTS

None

Support/Opposition

Support: AARP

American Civil Liberties Union (ACLU)
Asian Americans for Civil Rights and Equality
California Immigration Policy Center
California Labor Federation
Commission on the Status of Women
Consumer Action
Consumer Federation of California
Consumer's Union
Eagle Forum
Gun Owners of California
Los Angeles County District Attorney's Office
Liberty Coalition
Privacy Activism
Privacy Rights Clearinghouse
SEIU - California State Council

Opposition: None on File

VOTES

Assembly Floor – Ayes: 77, Noes: 0

Senate Floor – Ayes: 36, Noes: 3

Concurrence – Ayes: 38, Noes: 0

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